

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PUGET SOUNDKEEPER ALLIANCE, and
WASTE ACTION PROJECT,

Plaintiffs,

v.

THE BOEING COMPANY,

Defendant.

No. 2:18-cv-01209-MJP

AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION AND ORDER

NOTE ON MOTION CALENDAR:
November 15, 2018

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (“ESI”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the application of the proportionality standard in discovery, requests for production of ESI and related responses should be reasonably targeted, clear, and as specific as possible.

1 **B. ESI Disclosures**

2 Within 30 days after the Rule 26(f) conference, or at a later time if agreed to by the parties,
3 each party shall disclose:

4 1. Custodians. The five custodians most likely to have discoverable ESI in their
5 possession, custody or control. The custodians shall be identified by name, title, connection to the
6 instant litigation, and the type of the information under his/her control.

7 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives,
8 servers, etc.), if any, likely to contain discoverable ESI.

9 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain
10 discoverable ESI (e.g. third-party email and/or mobile device providers, “cloud” storage, etc.) and,
11 for each such source, the extent to which a party is (or is not) able to preserve information stored in
12 the third-party data source.

13 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by
14 type, date, custodian, electronic system or other criteria sufficient to specifically identify the data
15 source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B)

16 **C. Preservation of ESI**

17 The parties acknowledge that they have a common law obligation to take reasonable and
18 proportional steps to preserve discoverable information in the party’s possession, custody or control.
19 With respect to preservation of ESI, the parties agree as follows:

20 1. Absent a showing of good cause by the requesting party, the parties shall not be
21 required to modify the procedures used by them in the ordinary course of business to back-up and
22 archive data; provided, however, that the parties shall preserve all discoverable ESI in their
23 possession, custody or control.

24 2. All parties shall supplement their disclosures in accordance with Rule 26(e) with
25 discoverable ESI responsive to a particular discovery request or mandatory disclosure where that data
26 is created after a disclosure or response is made (unless excluded under (C)(3) or (D)(1)-(2) below).

- 1 3. Absent a showing of good cause by the requesting party, the following categories of
2 ESI need not be preserved:
- 3 a. Deleted, slack, fragmented, or other data only accessible by forensics.
 - 4 b. Random access memory (RAM), temporary files, or other ephemeral data that
5 are difficult to preserve without disabling the operating system.
 - 6 c. On-line access data such as temporary internet files, history, cache, cookies,
7 and the like.
 - 8 d. Data in metadata fields that are frequently updated automatically, such as
9 last-opened dates (see also Section (E)(5)).
 - 10 e. Back-up data that are substantially duplicative of data that are more
11 accessible elsewhere.
 - 12 f. Server, system or network logs.
 - 13 g. Data remaining from systems no longer in use that is unintelligible on the
14 systems in use.
 - 15 h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from
16 mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided that a copy of
17 all such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop
18 computer, or “cloud” storage).
 - 19 i. Social media data.

20 **D. Privilege**

- 21 1. With respect to privileged or work-product information generated after the filing of
22 the complaint, parties are not required to include any such information in privilege logs.
- 23 2. Activities undertaken in compliance with the duty to preserve information are
24 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).
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- 26

3. Information produced in discovery that is protected as privileged or work product shall be addressed under the terms of the Joint Status Report and Discovery Plan filed herein and Fed. R. Civ. P. 26(b)(5)(B).

E. ESI Discovery Procedures

1. On-site inspection of electronic media. Such an inspection shall not be permitted absent a demonstration by the requesting party of specific need and good cause or by agreement of the parties.

2. Search methodology. The parties shall timely attempt to reach agreement on appropriate search terms, or an appropriate computer- or technology-aided methodology, before any such effort is undertaken. The parties shall continue to cooperate in revising the appropriateness of the search terms or computer- or technology-aided methodology.

In the absence of agreement on appropriate search terms, or an appropriate computer- or technology-aided methodology, the following procedures shall apply:

a. A producing party shall disclose the search terms or queries, if any, and methodology that it proposes to use to locate ESI likely to contain discoverable information. The parties shall meet and confer to attempt to reach an agreement on the producing party's search terms and/or other methodology.

b. If search terms or queries are used to locate ESI likely to contain discoverable information, a requesting party is entitled to no more than 5 additional terms or queries to be used in connection with further electronic searches absent a showing of good cause or agreement of the parties. The 5 additional terms or queries, if any, must be provided by the requesting party within 14 days of receipt of the producing party's production.

c. Focused terms and queries should be employed; broad terms or queries, such as product and company names, generally should be avoided. Absent a showing of good cause, each search term or query returning more than 250 megabytes of data are presumed to

be overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large file types.

d. The producing party shall search both non-custodial data sources and ESI maintained by the custodians identified above.

3. Format. The parties agree that ESI will be produced to the requesting party with searchable OCR text in PDF format and with load files, however, files that are not easily converted to image format, such as spreadsheet, database and drawing files, should be produced in native format unless agreed to otherwise between the parties.

4. De-duplication. The parties may de-duplicate their ESI production across custodial and non-custodial data sources after disclosure of such de-duplication to the requesting party.

5. Metadata fields. If the requesting party seeks metadata, the parties agree that only the following metadata fields need be produced: document type; custodian and duplicate custodians; author/from; recipient/to, cc and bcc; title/subject; file name and size; original file path; date and time created, sent, modified and/or received; and hash value.

Dated this 15th day of November, 2018.

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ORDER

Based on the foregoing, IT IS SO ORDERED.

Dated this 15th day of November, 2018.



Marsha J. Pechman
United States District Judge